

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, *ex rel*
CHRIS McGOWAN,

No. C 09-05984 JSW

Plaintiff,

v.

KAISER FOUNDATION HEALTH PLAN,

Defendant.

**ORDER REGARDING
ADMINISTRATIVE MOTION TO
CONTINUE SETTLEMENT
CONFERENCE AND MODIFYING
BRIEFING BRIEFING
SCHEDULE ON MOTION TO
DISMISS**

On September 29, 2014, Defendant, Kaiser Foundation Health Plan (“Kaiser”) filed an administrative motion to continue the deadline by which the parties must participate in a settlement conference. (Docket No. 184.) That request is premised on the fact that, on September 26, 2014, the United States filed a motion to dismiss, which Kaiser contends is likely to resolve this matter. Relator has not opposed the motion to continue, in light of Kaiser’s position that it will not settle this matter so long as the motion to dismiss is pending.

On May 23, 2014, after the parties had submitted their briefs on Kaiser’s motion for summary judgment, the United States filed a Statement of Interest, in which it set forth its position on the merits of Relator’s case. The Court gave Relator the opportunity to respond to that statement before the hearing on Kaiser’s motion. In addition, the United States appeared at the hearing on Kaiser’s motion and responded to certain of the Court’s questions, including a question about whether, in light of the fact that the United States has weighed in on its view of the case, further settlement efforts would be warranted before the Court rules on the motion.

1 Based on the parties' responses, the Court referred the parties to a settlement
2 conference. Although the Court did not explicitly include the United States in its Order of
3 Referral, it intended and expected that the United States, which is the real party in interest,
4 would attend and participate in that conference so that all parties could consider its position.

5 The fact that the United States chose to file a motion to dismiss shortly before the
6 scheduled settlement conference does not alter the Court's view that the interests of judicial
7 efficiency and the best use of the parties' and the Court's resources would be for all interested
8 parties to participate in a settlement conference before the Court resolves *any* of the pending
9 motions, including the motion to dismiss.

10 Accordingly, the Court DENIES Kaiser's motion to continue the settlement conference
11 until after the Court has resolved the United States' motion to dismiss. Moreover, the Court
12 makes explicit its original intent, and it ORDERS the United States to appear and participate in
13 that settlement conference. The Court expects that Relator, Kaiser and the United States will
14 come to the settlement conference with open minds and will participate in those proceedings in
15 good faith. If, however, they are unable to reach a settlement, the Court will resolve the
16 pending motions and, if appropriate, reschedule the pretrial conference and trial date.

17 **The settlement conference scheduled for October 7, 2014, shall go forward pending**
18 **a further Order from Magistrate Judge Beeler.** If for some reason that date is no longer
19 workable, the Court will extend the deadline to complete the settlement conference to
20 November 21, 2014.

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1 It is FURTHER ORDERED that the briefing schedule on the motion to dismiss is
2 MODIFIED as follows: Relator's opposition shall be due on October 17, 2014, and the United
3 States' reply shall be due on October 24, 2014. In the event the settlement conference does not
4 go forward on October 7, 2014, the United States and Relator shall meet and confer and submit
5 a proposed briefing schedule to the Court and, if appropriate, a continuance of the hearing date.

6 **IT IS SO ORDERED.**

7 Dated: October 1, 2014


JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

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9 cc: Magistrate Judge Laurel Beeler
10 Lashanda Scott
11 Magistrate Referral Clerk
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